

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ADJUSTACAM LLC,

Plaintiff,

V.

AMAZON.COM, INC.;
AUDITEK CORPORATION; et al.

Defendants,

CASE NO. 6:10-CV-00329-LED

**DEFENDANT/COUNTER-CLAIMANT AUDITEK CORPORATION'S Answer to
Third Amended Complaint and Counter-Claim**

Come now Defendant/Counter-Claimant Auditek Corporation (“Auditek”) and gave its Answer and Counter-Claim, in response to the Third Amended Complaint (ECF #485) filed by Plaintiff/Counter-Defendant AdjustaCam LLC (“AdjustaCam”), as follows:

1 Auditek is without sufficient information to admit or deny the allegation and, on that basis, deny.

2 Auditek is without sufficient information to admit or deny the allegation and, on that basis, deny.

3 Auditek admits the allegation of place of business.

4 Auditek is without sufficient information to admit or deny the allegation and, on that basis, deny.

5 Auditek is without sufficient information to admit or deny the allegation and, on that basis, deny.

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38 Auditek is without sufficient information to admit or deny the allegation and, on that basis, deny.

39 Auditek admits the subject matter jurisdiction under 28 USC 1331 and 1338. Auditek is without sufficient information to admit or deny the factual allegation re selling, inducement and distribution of accused products in the judicial district and, on that basis, deny.

40 Auditek is a California corporation; Auditek denies that the venue is proper and reserves its right to move the court for change of venue.

41 Auditek admits the allegation of the existence of the 5,855,343 patent ("343 Patent"), to the extent the description, specification and claims of said 343 Patent comport with the records of United States Patent and Trademark Office ("USPTO").

42 Auditek admits the allegation of the existence of the 5,855,343 patent ("343 Patent"), to the extent the assignments, right to sue and standing for assertion of infringement of said 343 Patent comport with the records of United States Patent and Trademark Office ("USPTO").

Auditek is without sufficient information to admit or deny other factual allegations and, on that basis, deny.

43 Auditek admits the allegation of the existence of the 5,855,343 patent ("343 Patent"), to the extent the description, specification and claims of said 343 Patent comport with the records of United States Patent and Trademark Office ("USPTO"). Auditek is without sufficient information to admit or deny other factual allegations and, on that basis, deny.

44 Auditek is without sufficient information to admit or deny the allegation and, on that basis, deny.

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48 Auditek's products work on a 3-axle principle and are different from the description stated by Plaintiff. Pending further expert review, analysis and opinion, and proper claim construction, Auditek denies the allegation of factual account re its infringement liability.

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51 Auditek denies it has infringement liability.

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Affirmative Defenses

1. Plaintiff failed to state a claim.

2. Auditek did not infringe upon AdjustaCam's 343 Patent, either literally, or by doctrine of equivalents, or in any direct, indirect, contributory or inducing capacity.
3. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.
4. Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.
5. Plaintiff's claims are barred, in whole or in part, by 35 U.S.C. 287.
6. Plaintiff's claims are barred, in whole or in part, by patent misuse.
7. Plaintiff's claims are barred, in whole or in part, by prosecution estoppel.
8. Some defendants are improperly joined and Auditek reserves its right to seek separate trials.
9. Auditek reserves its right to amend the affirmative defenses as the case progresses.

Counter-Claim for

Non-infringement, Invalidity and Unenforceability

1. This counterclaim arises under 28 USC 2201 and 2201. This Court has subject matter jurisdiction for patent matters, pursuant to 28 USC 1338. There is an actual justiciable controversy between Auditek and Plaintiff.
2. Plaintiff alleged to be the owner of all right, title and interest in and to the 5,855,343 patent ("343 Patent").
3. Plaintiff has asserted that Defendant Auditek infringed upon its 343 Patent.
4. On information and belief, and pending further discovery findings, the 343 Patent should be invalid under the provisions of 35 USC 101, 102, 103 and/or 112.

5. Plaintiff has, in bad faith, made assertion of infringement knowing that the products features are different than what were claimed in the 343 Patent.
6. Plaintiff has, in bad faith, claimed royalty as damages that exceeded its scope of entitlement, if it is entitled to any damages claims at all.
7. Due to the controversy stated herein re the validity, enforceability and infringement, Auditek requests the Court a declaratory judgment in its favor.

PRAYER

- a. A judgment of non-infringement be entered by Court.
- b. An order be made that the 343 Patent is invalid and/or unenforceable.
- c. Plaintiff be ordered to pay attorney's fees and costs to Auditek.
- d. Such other reliefs be awarded to Auditek, as the Court deems just and reasonable.

Dated: Aug. 29, 2011

Respectfully Submitted,

/s/Jen-Feng Lee

Jen-Feng Lee, *Pro Hac Vice*
LT Pacific Law Group LLP
17800 Castleton Street, Suite 383
City of Industry, CA 91748
Tel: (626) 810-7200
Fax: (626) 810-7300

CERTIFICATE OF SERVICE

I hereby certify that on Aug. 29, 2011, the foregoing document has been electronically filed with the Clerk in accordance with the CM/ECF system procedures and Local Rule CV-5(a), which will cause email notification of such filing to be served upon all counsel who have consented to electronic service.

/s/Jen-Feng (Jeff) Lee